THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on : 16.05.2007

+ **WP(C) No.14189/2006**

MS HINA CHANDRAKANT KAKKAD ...Petitioner

- versus -

UNION OF INDIA & OTHERS ...Respondents

Advocates who appeared in this case:
For the Petitioner : Mr Amit Gupta
For the Respondents : Mr Sumeher Bajaj for Mr Rajeeve Mehra

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ? YES

2. To be referred to the Reporter or not ? YES

3. Whether the judgment should be reported in Digest ? YES

BADAR DURREZ AHMED, J (ORAL)

1. The petitioner is challenging the order dated 01.09.2006 passed by the Joint Secretary (CPV) & CPO, Ministry of External Affairs, Government of India, New Delhi. By virtue of the impugned order, the petitioner's application for restoration of her passport was rejected on the ground that there are still pending criminal cases against the petitioner and the restoration of her passport at this juncture may affect the ongoing proceedings before the court. The allegations against the petitioner are that the petitioner (Ms Hina Chandrakant

Kakkad) tried to travel to London on 08.07.2004 on Passport No.E4175544 issued on 25.02.2003 to one Ms. Geetaben Dhirubhai Patel. It was revealed that the photograph of the petitioner was replaced on the passport issued to Ms Patel and thus a forgery was committed. The petitioner was arrested on 08.07.2004 and remanded to police custody. Later on, she was released on bail. It is an admitted position that the petitioner was issued a passport bearing No.R831435 on 09.06.1994. On this passport she had travelled to London. In 1998, she got married in London. In 2004, while she was in India, this passport (R831435) was reportedly lost. She applied for a fresh passport and was issued a new Passport E8469206 on 08.04.2004 which is valid till 07.04.2014. When she applied for this new passport which was issued to her on 08.04.2004, the petitioner disclosed herself as single, though she was already married.

2. However, the petitioner did not travel on this passport and was apprehended on 08.07.2004 attempting to travel on the forged Passport No.E4175544 which was issued to Ms. Patel. According to the learned counsel for the respondents, the reason why she was travelling on this forged passport was that she had applied for a U.K. visa and had been given the same in respect of her Passport E8469206. The learned counsel for the respondents further points out that on 08.07.2004 when she was attempting to go out of India, she was travelling with the husband of Ms. Patel portraying and posing herself as the wife of Mr Patel.

3. The learned counsel appearing on behalf of the petitioner insisted that the present case was covered by various decisions of the Supreme Court and those of the High Courts. He referred to the decision of the Supreme Court in the case of ***State of Maharashtra v. Sukhdeo Singh: AIR 1992 SC 2100***. He also referred to the decision of a learned Single Judge of the Allahabad High Court in the case of ***Aklesh Kumar Jain v. State of Uttar Pradesh and others: 1988 CRL. L. J. 1227***. The decision of a learned Single Judge of this Court in the case of ***Hajra Iqbal Memon v. Union of India: 1997 (41) DRJ 108*** as well as the decision of a learned Single Judge of the Madras High Court in the case of ***Sri-la-Sri Arunagirinathar v. State: AIR 1989 MADRAS 3*** were also referred to.

4. The Supreme Court decision was in the case of a concluded trial wherein the question of suspicion taking place of evidence was considered. The Supreme Court was of the view that the mere raising of ex facie grave suspicion was not sufficient for a conviction in the absence of reliable evidence and mere suspicion alone cannot be acted upon. The present case is entirely different. The trial in the criminal case is yet to be concluded. The passport officer in the present case had rejected the petitioner's application for restoration of her passport under the circumstances indicated above.

5. Insofar as the decision of the Allahabad High Court is concerned, that is clearly inapplicable because in that case the petitioner therein was facing a charge under Section 498A IPC at the instance of his wife. A petition for divorce by the petitioner was also pending. In that case the Magistrate, without passing any order, merely directed the petitioner to go abroad on the condition that he should take his wife with him. The Court observed that a positive order ought to have been passed and the Magistrate, by merely making a suggestion, exceeded his jurisdiction in doing so. Clearly, this has no applicability to the facts of the present case.

6. The decision in the case of ***Hajra Iqbal Memon*** (supra) is also not applicable because in that case no reasons had been given in the impugned order whereby the passport of the petitioner had been impounded. The Court observed that the order had been passed hurriedly and, therefore, set aside the same. This decision does not also apply to the facts of the present case.

7. Insofar as the decision of the Madras High Court is concerned, there was an oral order interdicting or preventing the petitioner therein from travelling abroad. It is in this context that the learned Single Judge of the Madras High Court had observed that the right to travel abroad is a fundamental right provided the person concerned had a valid passport. Since the petitioner therein had a valid passport, the oral order interdicting or

preventing the petitioner from travelling abroad, was held illegal. This, clearly, is not the situation in the present case.

8. In view of the foregoing discussion, I see no reason to interfere with the impugned order. Accordingly, this writ petition is dismissed.

BADAR DURREZ AHMED
(JUDGE)

May 16, 2007
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